

Remarks

Applicant traverses each of the rejections presented in the instant Office Action because the Examiner fails to cite to any reference that teaches a housing part that is constructed as a lever element being arranged to bend a bottle cap. Moreover, the Examiner acknowledges that neither the Nakamura nor the Donnelly reference teach these aspects of the claimed invention. As set forth in detail below, Applicant respectfully maintains that the claimed invention is allowable over the cited references.

The final Office Action dated March 18, 2008 listed the following: claims 1 and 5-7 stand rejected under 35 U.S.C. § 103(a) over Nakamura *et al.* (U.S. 6,529,714) in view of Donnelly (U.S. 5,531,365); claim 3 stands rejected under 35 U.S.C. § 103(a) over Nakamura in view of Donnelly and further in view of Fuchs *et al.* (U.S. 3,870,184); and claim 4 stands rejected under 35 U.S.C. § 103(a) over Nakamura in view of Donnelly and further in view of Savovic *et al.* (U.S. 5,260,146); the layout of the specification is objected to; and claim 6 is rejected under 35 U.S.C. § 112(2).

Applicant respectfully traverses the § 103(a) rejections of claims 1 and 5-7 because the combination proposed by the Examiner fails to correspond to the claimed invention which includes, for example, aspects directed to a housing part that is constructed as a lever element being arranged to bend a bottle cap. The Examiner acknowledges that the cited portions of the Nakamura reference do not teach that lid 3 in any way functions as a lever element being arranged to bend any material. *See, e.g.*, page 2:7-11 of the instant Office Action. In an attempt to address this deficiency, the Examiner cites to Donnelly's belt clip 60, which includes multipurpose tool 62 that has a bottle cap opener 112 (*see, e.g.*, Figures 6A and 7A; Col. 4:46-49 and Col. 5:12-15); however, Donnelly's belt clip 60 is not part of the housing of a mobile phone. Instead Donnelly's belt clip 60 is attached via an adaptor 6 to the housing 10 of personal communications device 2. *See, e.g.*, Figures 1 and 3A; Col. 2:2-7. Applicant notes that the Examiner further acknowledges that Donnelly's belt clip 60 is not being relied upon to teach a housing part that is constructed as a lever element being arranged to bend a bottle cap (*i.e.*, that Donnelly's belt clip 60 is not part of the housing of a mobile device). *See, e.g.*, page 2:12-18 of the instant Office Action.

In view of the above, the Office Action fails to cite to any reference that teaches a housing part that is constructed as a lever element being arranged to bend a bottle cap. As such, the proposed combination of the Nakamura and Donnelly references would not result in Nakamura's lid 3 being arranged to bend any material. Applicant submits that any combination that includes a housing part that is constructed as a lever element being arranged to bend a bottle cap (not taught by either reference) is impermissibly based upon hindsight reconstruction of Applicant's claims using Applicant's invention as a template (*i.e.*, the Examiner appears to be simply identifying elements and then improperly arranging these elements in the manner taught by Applicant's disclosure). *See, e.g.*, M.P.E.P. § 2145. Accordingly, the § 103(a) rejections of claims 1 and 5-7 are improper and Applicant requests that they be withdrawn.

Applicant further traverses the § 103(a) rejection of claim 5 because the cited portions of the references fail to correspond to aspects of the claimed invention directed to the lever element being constructed as an angled metal plate. The Examiner cites to Nakamura's lid 3 as allegedly corresponding to the lever element of the claimed invention; however, the cited portions of the Nakamura reference do not teach that lid 3 is a folded metal plate. Moreover, a word search of the Nakamura reference fails to identify any mention of the word "metal" in the reference. The Examiner appears to be taking Official Notice that Nakamura's lid 3 "can be constructed as an angled metal plate." *See, e.g.*, page 3:1-5 of the instant Office Action. According to M.P.E.P. § 2144.03, "It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." In addition, "Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection". M.P.E.P. § 2144.03. Thus, Applicant requests that the Examiner provided support for the conclusion that Nakamura's lid 3 "can be constructed as an angled metal plate", and support for evidence of motivation by one skilled in the art to make such a modification. Accordingly, the § 103(a) rejection of claim 5 is improper and Applicant requests that it be withdrawn.

Applicant respectfully traverses the § 103(a) rejections of claims 3 and 4 because the Examiner continues to propose the same illogical modifications of the Nakamura reference without responding in any manner to Applicant's previous arguments regarding the impropriety of these modification. Applicant has presented these arguments in each of the previous three Office Action Responses (most recently in the Office Action Response dated December 1, 2007 hereby incorporated in its entirety by reference). *See, e.g.,* M.P.E.P. § 707(f), ("the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it."). The Examiner continues to assert the same illogical and impractical combinations of references in attempt to address the limitations of claims 3 and 4 without responding in any manner to Applicant's prior arguments. The impropriety of the § 103(a) rejections of claims 3 and 4 is discussed in detail below.

Regarding the § 103(a) rejection of claim 3, the Examiner's assertion of correspondence is illogical in that it appears to require adding a bottle cap to a phone. This illogical combination is apparent from the Examiner's attempt at providing motivation for modifying Nakamura with the cited teachings of the Fuchs reference. The Fuchs reference relates to improving convenience type easy-open closures for bottles (*see, e.g.,* the abstract), and the Examiner's alleged motivation for the modifying Nakamura with these teachings is "to increase the hoop strength" (*see, e.g.,* the instant Office Action at page 7:13-14). However, the Nakamura reference does not have any corresponding hoop strength to increase because Nakamura has no corresponding easy-open closure for a bottle. Applicant submits that it is illogical to suggest modifying the Nakamura reference to increase the hoop strength because Nakamura has no corresponding structure in which to increase the hoop strength. Put another way, it appears that the Examiner is attempting to increase the hoop strength of a bottle top somehow located on a phone. To the extent that the Examiner is asserting that a phone would function as a bottle, Applicant submits that there is no support for such an illogical function.

Moreover, the skilled artisan would not be motivated to modify Nakamura with the cited teachings of Fuchs because of the lack of correspondence between the references and further because the references are from completely unrelated fields of

endeavor (*i.e.*, radio communication equipment and bottle caps respectively). Applicant submits that the Fuchs reference is not analogous art to the claimed invention, and thus, according to M.P.E.P. § 2141.01(a), the Examiner has improperly relied upon Fuchs as a basis for the § 103(a) rejection of claim 3. In addition, the combination of references cited by the Examiner fails to correspond to the claimed invention for the reasons discussed above in relation to the § 103(a) rejection of claim 1. In this regard, the rejection of claim 3 is improper because it relies upon the same misinterpretation of the Nakamura and Donnelly references.

In view of the above, the § 103(a) rejection of claim 3 is improper and Applicant requests that it be withdrawn.

Regarding the § 103(a) rejection of claim 4, the cited portions of the Savovic reference fail to correspond to the claimed invention which includes, for example, aspects directed to the lever element being made of metal and/or ceramic. The cited portions of the Savovic reference teach a cathodically protected battery 100 that is formed from a battery cell 110 (*see, e.g.*, Col. 2:62 to Col. 3:14 and Figure 1). The “metal lid” of Savovic, which the Examiner asserts as corresponding to the lever element of the claimed invention, is the lid for the cell housing of the battery cell (*i.e.*, the lid is part of the battery 100). The cited portions of the Savovic reference do not teach that the lid cited by the Examiner in any way functions as a lever element being arranged to bend any material.

Moreover, the Examiner fails to provide motivation for modifying Nakamura with the cited teachings of the Savovic reference. The Examiner cites to Nakamura’s lid 3, which forms part of the housing of a telephone 1 and which covers battery pack 10, as corresponding to the lever element of the claimed invention (*see, e.g.*, figure 1 and col. 2, lines 54-65). Applicant submits that one of skill in the art would not be motivated to modify the lid 3 of Nakamura with teachings from the Savovic reference that are directed to a battery cell (*see, e.g.*, Col. 2:62 to Col. 3:14 and Figure 1). The Examiner’s alleged motivation for modifying Nakamura is “to connect the anode to the positive terminal” (*see, e.g.*, the instant Office Action at page 8:3-4). Thus, the Examiner appears to be proposing that the skilled artisan would be motivated to modify Nakamura’s lid 3 to be made of metal in order to connect the anode of Nakamura’s battery pack 10 to the

positive terminal of battery pack 10. Applicant submits that this proposed modification of Nakamura is unsupported and illogical. The skilled artisan would not be motivated to modify Nakamura's lid 3 to be made of metal in order to connect to the battery pack 10, because electrically connecting the battery pack to the lid (which comprises part of the outer housing of the telephone 1) would cause the lid to be electrically charged relative to the battery pack thereby resulting in numerous problems with the functionality of the Nakamura reference as would be readily apparent to the skilled artisan. *See, e.g.*, M.P.E.P. § 2143.01 ("If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.").

In addition, the combination of references cited by the Examiner fails to correspond to the claimed invention for the reasons discussed above in relation to the § 103(a) rejection of claim 1. In this regard, the rejection of claim 4 is improper because it relies upon the same misinterpretation of the Nakamura and Donnelly references.

In view of the above, the § 103(a) rejection of claim 4 is improper and Applicant requests that it be withdrawn.

Regarding the Examiner's suggestion to add headings, Applicant respectfully declines because the indicated suggestions in 37 C.F.R. § 1.77(b) are not statutorily required for filing a non-provisional patent application under 35 USC § 111(a), but per 37 C.F.R. § 1.51(d) are only guidelines that are suggested for applicant's use. They are not mandatory, and in fact when Rule 77 was amended in 1996 (61 FR 42790, Aug. 19, 1996), Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, stated in the Official Gazette:

"Section 1.77 is permissive rather than mandatory. ... 1.77 merely expresses the Office's preference for the arrangement of the application elements. The Office may advise an applicant that the application does not comply with the format set forth in 1.77, and suggest this format for the applicant's consideration; however, the Office will not require any application to comply with the format set forth in 1.77."

In view of the above, Applicant prefers not to add section headings. Applicant previously presented this argument in the Office Action Response dated December 7, 2007, to which the Examiner failed to respond in any manner. As such it is unclear to Applicant why the


Examiner has maintained the objection to the specification when section headings are not required.

Regarding the § 112(2) rejection of claim 6, Applicant agrees with the Examiner that the remainder of claim 6 beginning on line 4 should read "said lever element being arranged to bend a material of lower hardness, external to the mobile telephone, by way of a leverage effect, wherein the material of lower hardness includes a bottle cap." It appears that the remainder of claim 6 was inadvertently cut from the bottom of page 2 of the Office Action Response dated December 1, 2007. Applicant herewith on page 2 of this paper submits a complete copy of claim 6. Thus, Applicant requests that the § 112(2) rejection of claim 6 be withdrawn.

In view of the remarks above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the attorney overseeing the application file, David Cordeiro, of NXP Corporation at (408) 474-9057.

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